

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

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### SUMMARY

#### **Affordable Housing, Real Estate Law and Mortgages Tuesday, October 16, 2018, 1:00 PM House Room 1, The Capitol**

The Affordable Housing, Real Estate Law and Mortgages Workgroup meeting was called to order at 1:00 p.m. by Delegate Christopher Peace, Chair.

#### **Members Present:**

Delegate Chris Peace, *Chair*; Senator George Barker, Delegate Betsy Carr, Cynthia Hall, *Governor Appointee*; Laura Lafayette, *Governor Appointee*; Neil Barber, *Community Futures*; Robert Bradshaw, *Independent Insurance Agents of Virginia*; Paul Brennan, *Virginia Housing Development Authority*; Andrew Clark, *Home Building Association of Virginia*; Tyler Craddock, *Virginia Association of Housing & Community Development Officials*; Chip Dicks, *Virginia Association of Realtors*; Andrew Friedman, *Virginia Beach Department of Housing & Neighborhood Preservation*; Brian Gordon, *Apartment & Office Building Association of Metropolitan Washington*; Michelle Gowdy, *Virginia Municipal League*; Kelly Harris-Braxton, *Virginia First Cities*; Pam Kestner, *Department of Housing & Community Development*; Kelly King Horne, *Homeward*; Joe Lerch, *Virginia Association of Counties*; Renee Pulliam, *Virginia Apartment Management Association*; Jay Speer, *Poverty Law Center*; Elizabeth Steele, *Stewart Title*; William Walton, *Real Property Inc.*; Elizabeth Palen, *Executive Director*

Topics covered: 1) Affordable Dwelling Units (ADU's), 2) Inoperable vehicle legislation, 3) Rent-to-Own contracts, and 4) Current development project using a public/private partnership.

#### **Affordable Dwelling Units (ADUs)**

Speaker: *Senator Jenifer McClellan*

Senator McClellan presented an overview of the meetings that she held with stakeholders interested in the topic. The meetings have each taken place since the 2018 legislative session.

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DELEGATE DANNY W. MARSHALL  
DELEGATE DAVID L. BULOVA  
DELEGATE BETSY CARR  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE  
SENATOR GEORGE L. BARKER  
SENATOR WILLIAM M. STANLEY, JR.

CYNTHIA HALL  
LAURA D. LAFAYETTE  
LAWRENCE PEARSON

The genesis of the meeting discussions were points from, SB 290, McClellan, 2018. The bill called for the following: 1) the expansion of two enabling statutes (one enabling statute that applies to four localities, and one that applies to the rest of the Commonwealth), 2) §15.2-2304 a more robust use of Affordable Dwelling Units (ADUs) as a tool to expand the stock of affordable housing.

The stakeholder group had both the supply and demand side of housing represented. They determined at the stake-holder meetings that: 1) for tenants (customer/demand side) additional education is needed about what housing is available, 2) the need for state-wide tenant associations, 3) the need for a group to outline the rights/responsibilities of tenants and landlords.

McClellan said that housing prices were outpacing wages in the Commonwealth and this is an issue in all pockets of the Commonwealth, even in affluent areas. Virginia is losing affordable housing because of gentrification. At her supply-side-meeting, where developers and realtors were represented, she said there is a need to layer financing types for development to occur.

Most developers in her stakeholder group believed that the tax credit program that is available through the City of Richmond, is only a pilot program and not a permanent program.

Her group determined a need for investment from the state and the need for a -state housing voucher program. The federal housing voucher program is too complicated -and not portable. Additionally, the historic tax credit program need to be expanded as there is more demand for credits than there are available to access by the developers.

Those present at her meetings concluded that there should be a focus on collaboration for the creation of more work-force housing. McClellan said, when defining affordable housing many people think only of subsidized or housing projects. The biggest gap is actually in workforce housing for police, fire, and teachers as many of them can't afford to live where they work.

Inclusionary zoning and creating new enabling statutes (ADU's) is how localities can fix this issue. It will require an investment from the Commonwealth.

Peace inquired about what are the ongoing concerns and what is the fiscal impact?

The answer given was that homebuilders and realtors have discomfort with some ADU ordinances passed by localities and the enabling statutes currently written.

There needs to be an incentive to developers to set aside density requirements and create higher density so there will be more affordable units in larger projects. This will help to diffuse the cost of affordable housing.

Different statutes, such as, §15.2-2304, that encompasses Albemarle County, Fairfax, Loudoun Alexandria says bluntly, here is your authority. Section 15.2-2305, is too cumbersome, Richmond City has used it one time, authorities from the city of Richmond said didn't know how to administer the section.

Senator Barker questioned if there was a problem with §15.2-2304 as it applies to his district and has provided for ADUs to have bonus density. The initial ordinance he said, applied to single family and town homes, it was expanded to include high -rise units, inclusive of the Tyson's area of his district. There was not an opposition, to having ADUs built but, ADUs to be within the area drawn in the county's comprehensive plan and could be produced by a developer or by a non-profit organization.

### **Inoperable vehicle proposed legislation**

Virginia Municipal League (VML) studied the impact of the proposed legislation that was distributed and discussed at the August Affordable Housing and Real Estate Law Workgroup. Since this workgroup last met, VML ultimately found the proposed legislation would cause a lowering of the current standards of regulating inoperable vehicles. Subsequently, at the call of the Chair, the workgroup unanimously agreed to forgo recommending this proposed legislation to the full Commission for endorsement.

### **Rent-to-own Contracts**

Speaker: *Eric Dunn, National Housing Law Project*

Eric Dunn worked in conjunction with Chip Dicks, Virginia Association of Realtors, to produce draft for review by the workgroup.

The proposed legislation was initially based on (SB195, Locke, 2018) but now is a simplified version of the former bill.

The term of art used in the draft is *executory real estate contract*, there is now no differentiation between types of rent-to-own contracts. And there is a continuum between good faith transactions and abusive contracts lie, this piece of proposed legislation presumes good faith on the part of the landlords.

The draft encompasses a list of exemptions of entities that are all regulated elsewhere, including real estate agents, and mortgage companies. The proposed legislation also includes an exemption for an owner with few properties (less than two properties).

§ 55-252.3 creates the substance of regulations, subpart C includes mandatory regulations and all are subject to the Virginia Landlord Tenant Act. This prevents a shift of repairs to buyer and assures an accounting-receipt for payment. Additionally, it makes it illegal for prepayment provision so tenant can finance conventional means.

The difference from the former bill is if there is a default, the tenant can preserve his investment-and has 30 days to cure a monetary default. Also, an interpleader provision-can direct money already paid toward rent owed. The proposed bill provides a road map for what a contract should contain-may be included but not required. The draft provides for reciprocal attorney fees.

Chris Peace inquired if the bill draft says it says the rent-to-own contract *may* be recorded, why shouldn't it read *must* be not recorded? Answer, because of a compromise that was reached between the realtors and Dunn. Peace asked if all parties shouldn't be put on notice, so that the bank holding the mortgage would know of the existence of an executory contract and that the contract in question is not a traditional landlord/tenant contract.

Laura Lafayette inquired if liens, sale price, other charges not stipulated, are fundamental? Consumer should know what they are purchasing and shouldn't contract for land be in writing?

Cynthia Hall said she has a concern about when liens are placed after the contract is entered into, the landlord could be incurring other liens if locality imposes a nuisance abatement or tax lien.

The parties were asked further refine t the proposed taking into consideration the workgroup's suggestions for change.

### **Libby Mill Project, Public/Private Partnership**

Speaker: *Shane Finnegan, Vice President of Construction and Development Gumenick Properties*

Shane Finnegan explained that his company, he family-owned Gumenick Properties, where he has worked for 14 years, includes both a real estate development company and property management component.

Libby Mill Project, is a public/private partnership, and is located where the Suburban Apartments built in the 1940's was once located. It borders the edge of the city of Richmond but is located in Henrico County.

The recession that took place in 2008 changed the format of the development. Originally residential homes and condominiums were to be constructed in Libbie

Mill. The method developers can use to finance condominiums changed during the recession; it is now necessary to pre-sell condominium homes prior to them being constructed.

Forming a mutually beneficial relationship with Henrico County, Gumenick Properties used a new ordinance for zoning, called an Urban-Mixed-Use(UMU) ordinance. The process took two years to obtain necessary approvals from the County and navigate the new zoning by both Henrico County and the developer.

An award-winning designed Henrico County Public library on the developer's private land was built, in took two -years' time in conjunction and partnership with Henrico County.

The usual adage, Finnegan said, "retail follows roof tops," was not the case with Libbie Mill. On the eighty acres and using maximum density, office space is now occupying more space, and the parking ratios are decreasing, Finnegan is looking at how to eventually repurpose the parking garage when there are fewer cars to house. Incorporating the ever-changing technological advances, including safety in buildings, are also on-going challenges.

The chair asked for public comment, hearing none, the meeting was adjourned at 3:00 PM.